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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,144	01/18/2001	Serge Haumont	930.321USW1	7814
32294	7590	12/01/2004	EXAMINER	
SQUIRE, SANDERS & DEMPSEY L.L.P. 14TH FLOOR 8000 TOWERS CRESCENT TYSONS CORNER, VA 22182				NGUYEN, BRIAN D
		ART UNIT		PAPER NUMBER
		2661		

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/765,144	HAUMONT ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Brian D Nguyen	2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on the application filed 1/18/01.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 49-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 49-81 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 January 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>4/27/01</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 49-81 are objected to because of the following informalities: Appropriate correction is required.

Claim 49, line 10, “the first number of packets” seems to refer back to “a first number of the data packets” in line 5. If this is true, it is suggested to change “the first number of packets” to ---the first number of the data packets---.

Claim 54, line 7, it is suggested to delete “the” before “said same data packets”.

Claim 63, line 3, it is suggested to insert ---said--- before “second station”.

Claim 65, line 3, it is suggested to delete “the” before “which”.

Claim 77, line 9, “the first number of packets” seems to refer back to “a first number of the data packets” in line 4. If this is true, it is suggested to change “the first number of packets” to ---the first number of the data packets---.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 51, 68, 70, 81 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 51, line 3, “that data packet” is unclear which packet the applicant is referring to.

Claim 68, line 3, "the or each data storage means" is unclear. Note that the identifying step in claim 49 only identifying if a packet from the first station is correctly received.

Claim 70 recites the limitation "the acknowledgement" in line 1. There is insufficient antecedent basis for this limitation in the claim. The acknowledgement seems to refer back to acknowledging the data packet described in claim 51. If this is true, it is suggested to include the limitation of claim 51 in claim 70.

Claim 71 recites the limitation "said acknowledgements" in line 4. There is insufficient antecedent basis for this limitation in the claim. Said acknowledgements seems to refer back to acknowledging the data packet described in claim 51. If this is true, it is suggested to include the limitation of claim 51 in claim 71.

Claim 81, line 2, "at least some of the same data packets" is unclear.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 49-56, 59-61, 63-65, 67-68, and 73-81 are rejected under 35 U.S.C. 102(b) as being anticipated by Averbuch et al (5,530,693).

Regarding claims 49 and 76, Averbuch discloses a method of transmitting packets of data in a communication network (figure 1) comprising at least first to third stations (105, 109, 106), the method comprising the steps of: providing data packets to only the first station (105) and

sending a first number (packets 201-203 for example) of the data packets (packets 201-208) from the first station (105) to a second station (109); subsequently providing data packets to both the first and third station when the second station has at least one predefined parameter with respect to the first and third station (see col. 4, lines 27-31); identifying via the second station which of the first number of packets are correctly received by the second station from the first station (col. 5, lines 2-9); and responsive to a signal from the second station sending a second number (packets 204-208 for example) of data packets from the third station to the second station commencing with a packet identified in the signal as being required after the last correctly received packet received from the first station (see abstract).

Regarding claim 50, Averbuch discloses a common node (103) connected to the first and third stations (see figure 1).

Regarding claims 51-53 Averbuch discloses acknowledging of the data packet and transmitting a second portion from the third station to the second station (see col. 3, lines 23-33).

Regarding claims 54, 68, Averbuch further discloses data storage means in the first and third station (see RAM 118 and 120 of figure 1) and removing an acknowledged packet from the storage means is inherent and well known.

Regarding claim 55, Averbuch discloses the predefined parameter is defined by the geographic position of the second station with respect to the first and third stations (see figure 1 where handoff is performed when 109 move into cell 112).

Regarding claims 56, 59, 59-61, Averbuch discloses the signal parameter is the quality of signal (see col. 7, lines 52-59).

Regarding claims 63-64, Averbuch discloses the handoff zone (see figure 1 where the handoff zone is the zone at the borders between cells 111 and 112).

Regarding claim 65, Averbuch discloses when handoff takes place, the second station transmits a signal to the third station to advise the third station of which packet or packets were received from the first station and the third station transmits the data packet identified as being required after the last packet to the second station (see col. 3, lines 23-33 and col. 5, lines 2-9).

Regarding claims 67, Averbuch discloses a unique number (sequence number for example) for each packet (see col. 5, lines 63-65 where blocks 201-208 of data are sequentially transmitted).

Regarding claims 73-75, Averbuch discloses the first and second base stations connected to the common node via a network (see figure 1), implicitly disclose data storage in the common node (the common node must have a memory for storing incoming data; a plurality of cells (BS 105 register with cell 111 and BS 106 register with cell 112);

Regarding claims 77-81, claims 77-81 are apparatus claims including limitations described in the method claims 49 and 54. Therefor, they are subject to the same rejection.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 66 and 69-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Averbuch et al (5,530,693).

Regarding claim 66, Averbuch does not specifically disclose if the second station does not correctly receive a data packet, the second station requests retransmission of the data packet. However, this feature is well known in the art. It is well known that a non-received packet must be re-transmitted in order to guarantee reliable data transfer.

Regarding claims 69-72, Averbuch does not specifically disclose a first node (first base station controller) and a second node (second base station controller). However, a first base station in communication with the first node and the second base station in communication with the second node is well known (for example, MSC in communication with BSC, BSC in communication with BS, BS in communication with MS and the handoff can performed between base stations of the same or different BSCs).

8. Claims 57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Averbuch et al (5,530,693) in view of Yuen (5,864,578).

Regarding claims 57-58, Averbuch does not specifically disclose the signal parameter is the power level of signals. However, this feature is well known in the art. Yuen discloses this feature (see col. 20, line 47-col. 21, line 7). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the power level for determining a handoff as taught by Yuen in the system of Averbuch in order to meet specific needs.

9. Claims 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Averbuch et al (5,530,693) in view of Corbett (6,438,116).

Regarding claim 62, Averbuch does not specifically disclose the parameter is averaged over time before it is determined if the criteria is satisfied. However, this feature is well known in the art. Yuen discloses this feature (see col. 4, lines 39-56). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the averaging technique as taught by Corbett in the system of Averbuch in order to meet specific needs.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Nguyen whose telephone number is (571) 272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chen et al (6,553,064), Baum et al (6,510,319), and Tu et al (6,381,463).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on (571) 272-3078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



BRIAN NGUYEN  
PRIMARY EXAMINER  
11/26/09